



DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC-2021-03]

RIN 1104-AA08

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The United States Parole Commission is revising its regulation to reopen and advance a parole date to explicitly reference medical and compassionate reasons as bases for reopening.

DATES: This regulation is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by docket identification number USPC-2021-03 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
2. Mail: Office of the General Counsel, U.S. Parole Commission, attention: USPC Rules Group, 90 K Street, N.E., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: Helen H. Krapels, General Counsel, U.S. Parole Commission, 90 K Street, N.E., Third Floor, Washington, D.C. 20530, telephone (202) 346-7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: The Parole Commission’s regulation at 28 CFR 2.15 provides that after the prisoner has served the minimum term, the Bureau of Prisons (“BOP”) may petition the Commission to reopen the case under 28 CFR 2.28(a) to consider the case for parole prior to the date set by the Commission at the initial or review hearing. The regulation requires that the BOP’s request show cause for earlier release and provides examples such as “an emergency, hardship, or the existence of other extraordinary circumstances that would warrant consideration of early parole.” These examples encompass a very broad set of circumstances that the Commission could consider, which would include illness and aging.

The Commission is not limited to only considering requests from the BOP, the regulation at 28 CFR 2.28(a), which is used for reopening a case for favorable information, can be used to consider a request from other sources, such as the prisoner or a family member. Revising the heading of the regulation will help to highlight its use to consider prisoners for compassionate release in addition to the “favorable information” that the Commission usually considers, such as program achievement in the institution. Revising the text of the regulation to include medical and other “extraordinary and compelling” information will broaden the circumstances that the Commission can consider for possible advancement of the release date.

Section 2.28(a) permits advancement of a presumptive parole date to an earlier presumptive parole date, advancement of a presumptive parole date to an earlier effective parole date, advancement of a continue to expiration decision to a presumptive or effective parole date, and advancement of a 15-year reconsideration hearing to a presumptive or effective parole date

without conducting a hearing. The Commissioner reopening the decision does have the option of ordering a reconsideration hearing to consider this new information.

The Commission is promulgating this rule as an interim rule and is providing a 30-day period for public comment. The revised rule will take effect upon publication in the Federal Register.

Executive Orders 12866 and 13563

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulation Planning and Review,” section 1(b), Principles of Regulation, and in accordance with Executive Order 13565, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation. The Commission has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

This rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and they will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E–Congressional Review Act)

This rule is not a “major rule” as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E–Congressional Review Act, now codified at 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term “rule” as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Interim Rule

Accordingly, the U. S. Parole Commission amends 28 CFR part 2 as follows:

PART 2 – [AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Revise § 2.28(a) to read as follows:

§2.28 Reopening of cases.

(a) Favorable information or information supporting medical parole or compassionate release.

Upon the receipt of new information of substantial significance favorable to the prisoner, including medical information, or other extraordinary and compelling information, a Commissioner may reopen a case (including an original jurisdiction case), and order a special reconsideration hearing on the next available docket, or modify the previous decision. The advancement of a presumptive release date or a decision to continue to a 15-year reconsideration hearing requires the concurrence of two Commissioners.

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Patricia K. Cushwa,
Chairman (Acting), U.S. Parole Commission.

[FR Doc. 2021-19917 Filed: 9/15/2021 8:45 am; Publication Date: 9/16/2021]